**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 89 OF 1990.**

The State of Maharashtra ... Appellant.

Versus.

Lalchand Newandram Jumani
residing at Room No.4, 1st floor,
88, MHiloal House, Gowalia Tank'
Road, Bombay 400 036. ... Respondent.

Shri A.S.Shitole, A.P.P. for the Appellant.

None for the Respondent.

**CORAM : ABHAY S.OKA, J.**

**DATED : 6th November, 2006.**

**ORAL JUDGMENT.:**

1. Heard the learned A.P.P. for the State in support of the Appeal against acquittal. By this Appeal the Appellant-State has taken exception to the Judgment and order dated 29th September 1989 passed by the learned Special Judge, Mumbai, in Special Case No.49 of 1987. By the said Judgment and order, the learned Special Judge acquitted the Respondent/original Accused for offence under section 5(2) read with section 5(1)(d), section 5(2) read with section 5(1)(a) of the Prevention of Corruption Act, 1947 read with section 161 of the Indian Penal Code.

2. Briefly stated the case of the prosecution is that at the relevant time the Respondent was working as

a Medical Officer (Health) in "S" Ward of the Bombay Municipal Corporation. The Respondent was concerned with the issue of renewal of health licences which are required to be obtained for running flour mills and factories. The Complainant had acquired a flour mill in January 1985 and had applied for grant and/or renewal of the various licences to the Mumbai Municipal Corporation. The allegation of the prosecution is that in the last week of October 1986, the Respondent had demanded the bribe of Rs.500/- from the complainant for issuing various memos and had accepted a sum of Rs.400/- from the Complainant. According to the case of the prosecution, on 19th November 1986 the Respondent demanded a bribe of Rs.2500/- for the purpose of transferring the health licence in the name of the Complainant. On 20th November 1986, at about 9.45 a.m., the Respondent demanded and accepted a bribe of Rs.300/- from the Complainant. On the very day, a trap was laid on the basis of the complaint filed by the Complainant. In the evening in the shop premises of the Complainant, the Respondent demanded and accepted a bribe of Rs.2000/- from the Complainant. The prosecution examined 23 prosecution witnesses for the purpose of establishing the offence as well as for the purpose of proving the sanction for prosecution. The learned Judge held that the prosecution has failed to establish the offence alleged against the Respondent.

3. The learned A.P.P. has invited my attention to the evidence on record and especially the evidence of the Complainant Shri Dashrath Singh Amit Singh (P.W.1). He submitted that the evidence of the Complainant clearly proves the demand and acceptance of the bribe amount by the Respondent on two occasions. He submitted that the evidence of panch witness Shri Ashok Nana Jagdale (P.W.3) establishes the demand and acceptance of the bribe on the part of the Respondent-accused. He submitted that P.W.5 Shri Rajbahadur Rajnarayan Yadav has established the bribe demanded by the accused on the first occasion and the acceptance thereof by the Respondents. He submitted that the panchanama made at the time of trap has been duly proved in evidence. He, therefore, submitted that the only conclusion which can be drawn from the evidence on record is of the guilt of the Respondent. He submitted that the impugned Judgment and order is perverse.

4. I have considered the submissions. I have perused the notes of evidence and the impugned Judgment and Order. P.W.1 Shri Dashrath Singh Amit Singh stated in the evidence that in January 1985 he acquired a flour mill from one Shri Hanumant P.Sonawane. According to him, a deed of assignment was executed in his favour on 19th June 1985 and the same was duly registered in the

office of the Sub-Registrar. He stated that on 27th January 1986, he applied to the concerned department of the Bombay Municipal Corporation for transfer of the licence/permits in respect of the flour mill which were standing in the name of Shri Hanumant Sonawane in his name and for renewal of the same. He has narrated in his evidence the steps taken by him in that behalf. He narrated that in October 1986 he met a Sanitary Inspector Shri Kerur, who informed him that for long period the health licence has not been renewed as the cases filed by the Health Department against the predecessor-in-title of the complainant were pending. Shri Kerur informed him that he would give the Complainant three memorandums addressed to the Legal Department of "N" Ward, Revenue Department of "N" Ward and to the Legal Department of "T" Ward. He stated that the signature of the Respondent who was the Medical Officer at the relevant time was required on the said Memorandums. Therefore, the Complainant approached the Respondent in his cabin and informed him that the Complainant was desirous of obtaining transfer of licences in his name and renewal thereof. According to the Complainant, the Respondent demanded a sum of Rs.500/- from him. As he was possessing cash only of Rs.200/-, he paid the said amount to the Respondent and assured to bring a further sum of Rs.300/- later on. However, the Respondent insisted that the balance amount

should be paid to him immediately. Therefore, the Complainant took the Respondent by his motor cycle to a xerox shop at Vikhroli. At that time the Complainant's younger brother Nandlal Singh was present in the shop. The Complainant's said brother handed over two currency notes of the denomination of Rs.100/- to the Complainant who in turn handed over the same to the Respondent.

5. Thereafter the Respondent handed over three memorandums to the Complainant. According to the Complainant he took further steps by paying penalty in pending cases. He paid all arrears of water charges to the Water Department of the Municipal Corporation. The Sanitary Inspector Shri Kerur thereafter informed the Complainant that the file of the Complainant was ready in all respects and the same would be placed before the Respondent. While the said Shri Kerur was going with the file towards the cabin of the Respondent-Accused, he was coming out of his cabin. At that time the Complainant informed him that he had paid all the dues and all the cases have been settled. The Respondent asked the Complainant to visit his office on the next day.

6. On the next day i.e. 19th November 1986, the complainant reached the office of the Respondent at 9.00 a.m. The Respondent accused came to his office at about

9.45 a.m. After the complainant met the Respondent, the Complainant was informed that the arrears of charges were not paid for a period of 13 years. The Respondent informed the Complainant that a sum of Rs.500/- will have to be paid to the Assistant Officer and the Divisional Health Officer. The Respondent demanded a sum of Rs.3000/- from the Complainant for renewal of licence. When the Complainant stated that Rs.3000/- was a very high amount and he was in a position to pay Rs.2500/-, the Respondent told the Complainant that unless the sum of Rs.2500/- was paid by the Complainant to him, the licence will not be renewed. The Respondent called the Complainant on the next morning along with a sum of Rs.2500/- and stated that he will renew the licence after receipt of the said amount.

7. On 20th November 1986, the Complainant went to the office of the Respondent along with his friend Shri Rajbahadur Ramnarayan Yadav (P.W.5). The Respondent-Accused arrived at 9.45 a.m. After the accused and P.W.5 Rajbahadur Yadav entered the cabin of the Respondent, a query was made by the Respondent whether the Complainant had brought the amount of Rs.2500/- which was demanded by him. The Complainant stated that he had some difficulty and he would bring the amount next day in the morning or in the evening. The Respondent replied that the money should be paid

forthwith. Thereupon the Complainant stated that he would pay whatever money he was possessing. He came out of the cabin of the Respondent. He was possessing six currency notes of the denomination of Rs.50/- each. He noted down the serial numbers on the said notes on a piece of paper which was produced by him in evidence. He stated that he carried the said currency notes in the pocket of his trouser. He stated that thereafter he entered the cabin of the Respondent along with P.W.5 Rajbahadur and handed over the currency notes to the Respondent. The current notes were accepted by the Respondent and were kept by him in the pocket of his trouser. The Respondent demanded the balance amount on the same day and stated that in the evening he would visit the xerox shop of the complainant at Vikhroli around 4.00 p.m.

8. According to the Complainant, he went back from the office by motor cycle and dropped his friend Rajbahadur on the way. According to the Complainant he collected Rs.2000/-, went to the office of the Anti-Corruption Bureau and met the Assistant Commissioner of Police. His complaint was recorded by the Anti-Corruption Bureau. Thereafter he handed over the 20 currency notes of Rs.100/- each which were to be handed over to the Respondent. He has thereafter stated as to how anthracine powder was applied to the currency

notes and how instructions were given to him regarding laying of trap.

9. He stated that at about 5.05 p.m. the Respondent came to his shop. In paragraph 36 to 39 of his deposition, he has stated thus:

> "36. We waited for the accused. At about 5.05 p.m. he came to my shop. After coming to my shop he asked me "how the things were" (Kya Halchal Hai). I replied that everything was O.K. (Thikthak Hai). The accused asked whether I had kept his money ready. I asked him as to by what time, he would do my work of the renewal of the licence. He replied "give me money, and come to my office on Monday. I will keep the renewal order ready after signing the same". He told that on Monday, I should pay the fees of the renewal of licence in the office of B.M.C. I replied that it was alright, and asked him how much money I should pay to him at that time. He replied that I should pay him Rs.2,300/-. I replied that I did not have Rs.2,300/- but had only Rs.2,000/- with me. He replied that it was alright and asked me to pay that amount to him.

37. After the above conversation, I took out the money from the left side chest pocket of my shirt. I took out the amount of Rs.2,000/- with the help of my right hand and handed it over to the accused. The accused extended his right hand and grabbed those currency notes. The accused then transferred those notes to his left hand. He then kept the amount by his left hand in the left side chest pocket of his shirt. Thereafter, I unbuttoned right sleeve of my shirt by using my left hand. I then rolled up the right sleeve of my shirt.

38. After I rolled up my sleeve, then persons of ACB and Shukla who were standing out came and hold hands of the accused by going on his back side. What I mean to say is that all the persons, who had been standing out came in my shop. Those persons dropped down the rolling shutter of my shop. The room became dark. They then switched on the lamp from which blue coloured light was coming out. When that light fell on my right hand, fingers of my right hand and other parts started giving out blue and greenish glow. Thereafter

that light was shown inside the left chest pocket of my shirt. The powder giving out blue and greenish glow was noticed inside the pocket.

39. Thereafter that light was focussed on the hands and pocket of the shirt of the accused. Blue greenish flow was noticed over his hand and over his pocket. The light was played on his hands and on the left side chest pocket of his shirt, where he had kept the money. The accused was wearing a full pant. I do not remember whether he was wearing a half shirt or a full shirt. I did see that shirt. If that shirt is shown to me, I can tell after seeing it whether I can identify it. (Mr.Shinde produces the sealed package. It is opened without disturbing the seal. The package contains half bush-shirt kept in a plastic bag. Outer wrapper is given Art.1, plastic bag is given Art.2 and the shirt is given Art.3). Now I carefully examine the shirt Art.3. The shirt, which the accused was wearing was a similar one."

He proved the panchanama in evidence. He identified the bundle of 20 currency notes of Rs.100 and another bundle

of six currency notes of Rs.50/- which was found with the Respondent the numbers of which were noted by him on a slip of paper at Exh.26.

10. In the cross-examination, he has stated that after the trap, his hands and clothes were examined under the ultra violet light and thereafter hands and clothes of the Respondent were examined under the same light. He, however, proceeded to state that he did not witness the fact that the person and clothes of the accused were examined under the light of ultra-violet lamp. He stated that in the examination-in-chief he had deposed about the blue and greenish glow over the hands and pocket of the Accused under ultra-violet light only because after the case was started, the police and panch witnesses had informed him that such a glow was noticed. He admitted that when the currency notes of Rs.50/- were found in the pocket of the Respondent/Accused, he was not present. In the cross-examination he stated that in the examination-in-chief he deposed that six currency notes of Rs.50/- were found in the pocket of the trouser of the Respondent as panch witnesses had disclosed the said fact to him. Thus in the cross-examination the Complainant admitted that he was not present when the person and clothes of the Respondent were examined under the ultra-violet lamp, though in the examination-in-chief he has stated that he had noticed

blue and greenish glow over the hands and the pocket of the Respondent. He also admitted that when the currency notes of Rs.50/- were allegedly found in the pocket of the Respondent, he was not present. Thus in the cross-examination the Complainant has not fully supported the prosecution. He admitted that on 20th November 1985, he had taken his friend Rajbahadur (P.W.5) to the office of "S" Ward of the Municipal Corporation. He admitted that he did not note down the serial number of the currency notes in the presence of said Rajbahadur.

11. P.W.3 Shri Ashok Nana Jagdale is a panch witness to the trap. In paragraph 11 of his deposition the witness has stated thus:

> "The entire conversation between the accused and the complainant was in Hindi. Thereafter the complainant inserted his right hand in his left chest pocket and took out the currency notes. As soon as the complainant placed his hand in his pocket I went still ahead. The accused accepted that amount by his right hand, transferred it to his left hand and kept it in the left side chest pocket of his shirt. After that the complainant folded up the right sleeve of his shirt by his left hand."

A perusal of the examination-in-chief of the said witness shows that the said witness has not at all stated that at the time of raid, 20 currency notes of Rs.100/- on which powder was applied were taken out by any one from the shirt pocket of the Respondent. Similarly he has not stated that the six currency notes of the denomination of Rs.50/- were taken out by any particular witness from the pocket of the trouser on the person of the Respondent. P.W.5 Rajbahadur Yadav was allegedly present when the bribe of Rs.300/- in the six currency notes of Rs.50/- each was demanded and accepted by the Respondent on 20th November 1986 in the morning. In paragraph 7 the said witness has stated thus:

> "7. Dashrathsingh then took out 6 currency notes of the denomination of Rs.50/- each. He then noted down serial Nos. of those currency notes on a small piece of paper. Dashrathsingh then kept that paper and the currency notes back in his pocket. I did see Dashrathsingh noting down the serial nos,. on the piece of paper. I did see that paper. Now I am shown slip of paper filed at Ex.26. It is the same piece of paper. Thereafter I and Dashrathsingh went back to the cabin of the accused."

P.W.1/complainant stated that he took from his own pocket six currency notes of Rs.50/- each and noted down the serial numbers on the currency notes on a small piece of paper. He stated that he did not note the numbers in presence of the said Rajbahadur. The said Rajbahadur however stated that he did see the Complainant noting down the serial numbers of the currency notes on a piece of paper. He also identified the said slip of paper in evidence. Thus there is material contradiction in the evidence of the complainant and the evidence of said Rajbahadur.

12. According to the prosecution, the bribe amount was firstly demanded by the Respondent from the Complainant in the last week of October 1986. Except for the bare words of the Complainant, there is no other evidence in this behalf. The evidence of the Complainant that he paid Rs.300/- by six currency notes of Rs.50/- denomination on 20th November 1986 becomes doubtful in view of the material contradictions in the evidence of P.W.1 and P.W.5. The Complainant has stated that he jotted down the serial numbers of the said six currency notes of Rs.50/- on a piece of paper in presence of the said Rajbahadur. However, the version of the said witness Rajbahadur is totally different. Thus the theory of noting down the serial numbers of the currency notes of Rs.50/- (total six in number) becomes

doubtful. As stated earlier, neither the Complainant nor the witness Rajbahadur has stated that a particular Police Officer or the panch witness took out the 20 currency notes of Rs.100/- denomination from the pocket of the Respondent. Both the Complainant and the panch witness have not stated about the examination of the said 20 currency notes under the ultra violet rays. The complainant has not supported the prosecution in the cross-examination on all material aspects.

13. Considering the said evidence on record, the learned Special Judge has come to the conclusion that the prosecution has failed to establish the case.

14. It is well settled principle of law that the presumption of innocence in favour of the Accused is further strengthened by the order of acquittal. Even if the submission of the learned A.P.P. is accepted, at the highest, it can be said that it is possible to take two different views on the basis of the same evidence. In the case of Allarkha K.Mansuri v/s. State of Gujarat [(2002) 3 S.C.C. 57), the Apex Court held that where two views are possible in an Appeal against acquittal, the one favouring the innocence of the Accused should be accepted. Same is the view taken by the Apex Court in the case of Dwarkadas V/s. State of Haryana [(2003 1 S.C.C. page 203]. This is not a case where any

perversity is shown in the view taken by the learned Special Judge. It is obvious that in view of the evidence of the Complainant and two other material witnesses, the conclusion of the learned Special Judge that the offence is not established cannot be said to be perverse. In fact the conclusion drawn by the learned Special Judge is certainly a possible conclusion which can be drawn on the basis of the evidence on record. Thus there is no merit in the Appeal. The Appeal is accordingly dismissed.

**Judge.**